



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on 18th day of August, 2004

Application of

**BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION**

for issuance of an amended certificate of public convenience and necessity under 49 U.S.C. 41102 to engage in interstate scheduled air transportation of persons, property, and mail

Served: August 18, 2004

Docket OST-2000-7668

**ORDER CONFIRMING ORAL ACTION
AND REISSUING INTERSTATE CERTIFICATE**

Summary

By this order, we (1) confirm our oral action of July 16, 2004, making the authority of Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection (Boston-Maine) to operate large aircraft in interstate scheduled air transportation effective on that date, (2) reissue the carrier's interstate scheduled passenger certificate to reflect the effective date of this authority, and (3) authorize the carrier to operate up to three large aircraft in its interstate service.

Background

By Order 2000-10-1, issued October 2, 2000, Boston-Maine was awarded interstate certificate authority to engage in scheduled passenger operations using *small* aircraft.¹ Under that authority, which was made effective on December 19, 2001,² the carrier has conducted scheduled passenger operations using 19-seat Jetstream 3100s, as well as all-cargo operations using CASA 212s.

¹ Small aircraft are aircraft originally designed with a maximum capacity of 60 seats or less or a maximum payload of 18,000 pounds or less.

² See Order 2001-12-21, issued December 27, 2001.

On August 27, 2002, Boston-Maine requested that its interstate certificate be amended to allow it to operate *large* aircraft.³ By Order 2003-2-24, issued February 28, 2003, we found the carrier fit to conduct large aircraft operations and reissued its certificate to remove the condition limiting the carrier's operations to small aircraft only. In doing so, we also restricted the carrier's large-aircraft authority to a single aircraft after noting that Boston-Maine's Federal Aviation Administration (FAA)-required key technical personnel had limited experience overseeing large aircraft operations of the type proposed by the carrier.⁴

Boston-Maine's large aircraft authority was to become effective six (business) days after the Department received, among other things, evidence that the carrier (1) had obtained authority from the FAA to operate large aircraft, (2) had obtained the liability insurance coverage required by Part 205 of our rules for such services, and (3) had provided updated fitness information.

On April 18, 2003, prior to receiving effective authority to commence its large aircraft operations, Boston-Maine filed information in Docket OST-2000-7668 requesting that the Department authorize it to operate two (2) additional 141-seat B-727 aircraft in interstate scheduled passenger service in order to serve some additional interstate markets.⁵ Also on April 18, the carrier filed an application in Docket OST-2003-14985 requesting authority to conduct foreign scheduled passenger operations using up to four (4) more B-727 aircraft. In total, Boston-Maine proposes to operate seven (7) B-727 aircraft in combined domestic and foreign operations.⁶

The Air Line Pilots Association (ALPA)⁷ filed answers on April 25 and 28, 2003, opposing, respectively, Boston-Maine's interstate and foreign requests for large aircraft authority to the extent that Boston-Maine seeks approval for the operation of more than the single large aircraft already approved by the Department. ALPA asserts that Boston-Maine has not addressed the Department's concerns expressed in Order 2002-12-20 that the carrier lacks the managerial capabilities required for such expanded operations, and that the Department should not allow Boston-Maine to expand its operations until it has operated for a period of time sufficient to demonstrate its ability to expand.⁸ Boston-Maine responded to ALPA's objections on

³ That is, aircraft designed to have a passenger capacity greater than 60 seats or 18,000 pounds payload. Specifically, Boston-Maine proposed to provide scheduled passenger operations using 141-seat B-727 aircraft.

⁴ Specifically, we required that, prior to expanding its operations to include more than one large aircraft, Boston-Maine would need to provide the Department with at least 45-days' advance notice of such plans along with updated information demonstrating its fitness to do so.

⁵ In its initial application, Boston-Maine proposed large aircraft operations only in the San Juan-St. Thomas market. The carrier is now planning large aircraft services in three additional city-pair markets: Manchester, New Hampshire-Orlando, Manchester-Myrtle Beach, and Myrtle Beach-Orlando.

⁶ The carrier also intends to continue its on-going small aircraft operations.

⁷ ALPA is a collective bargaining representative of the pilots employed by Pan American Airways Corp. (Pan Am). Pan Am and Boston-Maine share common ownership.

⁸ ALPA also reiterates its previously expressed contentions that the real purpose of Boston-Maine's operation of large aircraft is to shift operations currently performed by Pan Am to Boston-Maine.

May 6, 2003 (with respect to interstate authority)⁹ and May 7, 2003 (with respect to foreign authority), claiming that ALPA was inappropriately using the Department's certification process as a forum to address labor-related issues and contending that it was fit for its proposed expanded large aircraft services.¹⁰

Effective Authority

On May 20, 2004, Boston-Maine filed some of the additional documentation needed to have its interstate certificate authority made effective, including the required insurance documents and updated financial and other fitness information.¹¹ On July 16, 2004, it filed amended operations specifications showing that it had obtained large-aircraft operating authority from the FAA. Boston-Maine requested that the Department waive the normal six-day waiting period and make its authority effective as soon as the Department's review of these documents was completed.

Our review of the FAA and insurance documents was satisfactory and our review of the fitness information demonstrated that the carrier continued to be a U.S. citizen and was fit to conduct the large aircraft operations proposed in its interstate scheduled passenger certificate.¹² Under the circumstances, on July 16, 2004, we orally advised Boston-Maine that we were making its authority to operate one large aircraft in interstate scheduled passenger operations effective on that date, which we confirm here.

Additional Aircraft

As noted earlier, Boston-Maine has requested approval from the Department to operate more than the one large aircraft currently authorized by the Department. ALPA is correct that, in Order 2002-12-20, we noted that Boston-Maine's key technical personnel had little experience in overseeing large aircraft operations, hence, our one aircraft limitation. However, ALPA's answer was filed in April 2003 and, since that time, Boston-Maine has, in fact, made some additional changes to its management and support personnel. In light of this, and based on Boston-Maine's overall fitness, as discussed below, we have decided to permit Boston-Maine to operate up to three (3) large aircraft in its interstate operations. Boston-Maine has requested approval to operate a total of seven B-727 aircraft in combined interstate and foreign operations. Additional expansion capabilities will be discussed in the context of our decision on the carrier's request for a foreign scheduled passenger certificate.

⁹ Boston-Maine accompanied its reply with a Motion for Leave to File an Otherwise Unauthorized Document. We have decided to grant Boston-Maine's motion.

¹⁰ Boston-Maine filed additional fitness information on July 17, August 8, and October 3, 2003.

¹¹ On June 11 and 24, 2004, the carrier filed additional fitness information.

¹² As noted above, the carrier has also filed an application requesting that the Department issue it a certificate authorizing foreign scheduled passenger operations. That application will be handled in a separate order.

Ownership and Management

Boston-Maine states that there have been no changes in its ownership since the issuance of Order 2003-2-24. The carrier is wholly-owned by Pan American Airlines, Inc., a holding company majority owned by Mr. Timothy Mellon and Mr. David A. Fink, both U.S. citizens.

Boston-Maine's management and key technical personnel are as follows;

Mr. David A. Fink—President
 Mr. John R. Nadolny—Senior Vice President and General Counsel
 Mr. Joseph Carey—Treasurer
 Mr. Gordon Long—Vice President, Director of Airline Operations (Director of Operations)
 Mr. Steven Legere—Vice President of Maintenance
 Mr. Craig Jolliffe—Manager of Flight Operations
 Mr. Matthew Gallagher—Flight Operations Standardization Manager
 Mr. Christopher Chapman—Chief Pilot
 Mr. Timothy Donovan—Director of Maintenance
 Mr. William Moore—Chief Inspector/Director of Quality Assurance
 Mr. Edward MacNeil—Director of Safety

In addition, the following individuals have been hired to support Boston-Maine's B-727 operations:

Mr. William Davidson—B-727 Fleet Manager
 Mr. Frank Doglione—B-727 Fleet Training Manager
 Mr. Robert Rohrborn—B-727 Training Development Manager
 Mr. Horst Kleinbauer—B-727 Instructor

With the exceptions noted below, the experience and background of Boston-Maine's management and key technical personnel have been reviewed previously by the Department (*see* Orders 2000-9-17, 2001-12-21, and 2003-2-24).

Mr. Steven Legere, an Airframe and Powerplant Mechanic, has been Boston-Maine's Vice President of Maintenance since March 2004. Prior to accepting this position, he had been serving as the Vice President of Maintenance for Pan Am since January 2004. Mr. Legere initially joined Pan Am in 1998 as a Line Maintenance Supervisor. In 2001, he left Pan Am to work as a Line Maintenance Supervisor for Atlantic Coast Airlines. He returned to Pan Am in November 2001, and became the carrier's Assistant Vice President of Maintenance in August 2003.

Mr. Matthew Gallagher serves as Flight Operations Standardization Manager. Prior to joining Boston-Maine in late 2003, Mr. Gallagher was employed by Pan Am as a B-727 Captain. Mr. Gallagher holds an FAA-issued Airline Transport Pilot license (with B-727 type rating) and Flight Engineer license. He has logged a total of 15,400 flight hours operating various aircraft.

In August 2003, Mr. William Moore became Chief Inspector and Director of Quality Assurance. Mr. Moore initially joined Boston-Maine in February 2001 as an Inspector. Prior to joining the carrier, Mr. Moore served as a lead inspector for Pan Am, Flight Systems, Inc., in Myrtle Beach, SC, and Performance Aircraft Systems, Inc., in Dallas, TX. Mr. Moore also worked as a Parts Manager for Great Bay Marine, Inc., in Newington, NH. Mr. Moore is a former helicopter mechanic for the U.S. Air Force, and he holds an Airframe and Powerplant Mechanic certificate.

Mr. William Davidson joined Boston-Maine on December 1, 2002. On March 17, 2003, he was assigned to the position of B-727 Fleet Manager. Prior to joining Boston-Maine, he worked as a B-727 Captain for Pan Am. Mr. Gallagher holds an FAA-issued Airline Transport Pilot certificate (with B-727 type rating) and a Flight Engineer license. He has logged a total of 15,558 flight hours operating various aircraft, including 6,306 hours in B-727 aircraft.

Mr. Frank Doglione, a Commercial Pilot and Airframe and Powerplant Mechanic, joined Boston-Maine on August 5, 2003, as the carrier's B-727 Fleet Training Manager. Mr. Doglione specializes in flight training and will provide B-727 training for Boston-Maine at a Pan-Am owned and operated training facility located in Sanford, Florida.

Mr. Robert Rohrborn joined Boston-Maine in March 2003 as the B-727 Training Development Manager. Mr. Rohrborn is an Airline Transport Pilot and holds a B-727 type rating. He has over 30 years of experience operating various airplanes for Eastern Airlines and he has logged 8,573 flight hours in B-727 airplanes as pilot-in-command.

Boston-Maine hired Mr. Horst Kleinbauer as a B-727 Instructor. Mr. Kleinbauer holds an FAA-issued Airline Transport Pilot certificate (with B-727 type rating) and Flight Engineer license. Prior to joining Boston-Maine, Mr. Kleinbauer served as an instructor with Pan Am. Mr. Kleinbauer has 24 years of experience operating B-727 airplanes for Delta Airlines.

We find that these changes add managerial and support capabilities that should strengthen the carrier's ability to oversee its proposed B-727 operations. For instance, it has employed Mr. Legere to hold the key position of Vice President of Maintenance, a position not previously filled. Mr. Legere has several years of experience working with B-727 aircraft. The carrier has also augmented its B-727 support personnel to include, in addition to its initial B-727 Fleet Manager, individuals to hold the positions of B-727 Fleet Training Manager, B-727 Training Development Manager, and B-727 Instructor. We have also discussed the changes that Boston-Maine has made since December 2002 with the FAA, and that agency advises us that it believes these changes are positive actions on the carrier's part and that, as a result, Boston-Maine's management team, as currently structured, should be able to oversee some expansion of its large aircraft operations.

Financial Position

Boston-Maine estimates that its three B-727 aircraft will operate approximately 1,788 block hours during the first year of interstate operations. Forecasts provided for Boston-Maine's expanded interstate services show that the carrier requires funding of approximately \$2.3 million

to meet our financial fitness criteria for these three aircraft.¹³ This figure is based on the remaining pre-operating expenses to be incurred (\$869,000) plus one-quarter of the first-year operating expenses (that is, \$1.4 million) for its proposed interstate operations. According to the carrier's March 31, 2004, balance sheet, the company has \$7.7 million in current assets¹⁴ and \$500,900 in current liabilities, giving it positive working capital of \$7.2 million. The company also reported total assets of \$10.5 million, no long-term debt, and total stockholders' equity of \$10 million. Thus, it appears that Boston-Maine will have access to sufficient resources to allow it to operate up to three large aircraft without posing an undue risk to consumers or their funds.

Compliance Disposition

Boston-Maine states that there have been no changes in areas impacting its compliance posture since the issuance of Order 2003-2-24.¹⁵ Further, the FAA advises us that Boston-Maine's operations using a single large aircraft, in addition to the carrier's ongoing small aircraft operations, have been satisfactory.

In Order 2002-12-20, we noted that, during our review of the carrier's initial large aircraft application, we learned that Boston-Maine's then-current small aircraft operations were being held out to the traveling public as if they were flights performed by its sister company, Pan Am.¹⁶ At that time, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) was investigating whether Boston-Maine's actions constituted unfair and deceptive practices in violation of 49 U.S.C. 41712. Subsequently, the Enforcement Office and Boston-Maine entered into a Consent Order (*see* Order 2003-2-13, issued February 14, 2003) wherein, without admitting or denying the alleged violations, Boston-Maine agreed to cease and desist from future violations of 49 U.S.C. 41712.¹⁷ With respect to this matter, we note that, upon being informed by the Enforcement Office that it was investigating this matter, Boston-Maine immediately took action to address the concerns that had been raised. Moreover, we are aware of no other compliance issues involving the carrier since that time. While not condoning Boston-Maine's earlier actions, we do not believe that, in the absence of other negative compliance issues, they warrant a finding that the carrier has an unsatisfactory compliance posture.

¹³ In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it sufficient resources to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of "normal" certificated operations.

¹⁴ Third-party verification from its financial institutions shows that, at June 1, 2004, Boston-Maine had \$6.9 million in cash.

¹⁵ Compliance information provided for Boston-Maine's new management personnel raise no compliance-related issues.

¹⁶ Specifically, all of Boston-Maine's operations were offered under Pan Am's "PN" code (Boston-Maine had no code of its own at that time), but without appropriate notice that the flights at issue were really Boston-Maine flights. Further, while Boston-Maine was authorized by the Department to hold itself out under the trade name, "Pan Am Clipper Connection," it was not authorized to hold itself out under the name "Pan Am."

¹⁷ Under the terms of the consent order, Boston-Maine was also assessed a civil penalty of \$40,000, \$20,000 of which was forgiven under the terms of the order because the carrier committed no further violations within one year of the date of issuance of the order.

Thus, we find that Boston-Maine continues to hold the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.¹⁸

In light of all of the above, by this order we (1) confirm our oral action of July 16, 2004, making the large aircraft authority issued to Boston-Maine effective that date, (2) reissue the carrier's amended certificate to reflect its effectiveness, and (3) authorize the carrier to operate up to three large aircraft without a further fitness review.

ACCORDINGLY, Acting under the authority assigned by the Department in its Regulations, 14 CFR 385.12:

1. We confirm our oral action of July 16, 2004, making the amended interstate scheduled passenger certificate issued to Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection by Order 2003-2-24, effective on that same date.
2. We reissue to Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection, the interstate scheduled passenger certificate issued to it by Order 2003-2-24, in the attached form to reflect its effective date.
3. In the conduct of this service, Boston-Maine may operate up to three (3) large aircraft. We defer action on Boston-Maine's request to operate up to seven (7) large aircraft until such time as we have taken action on its request for foreign authority filed in Docket OST-2003-14985.
4. We direct Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection to submit to the Air Carrier Fitness Division a first-year progress report within 45 days following the end of its first year of conducting large aircraft operations.¹⁹
5. We grant the Motion for Leave to File an Otherwise Unauthorized Document filed by Boston-Maine Airways Corp. d/b/a Pan Am Clipper Connection on May 6, 2003.

¹⁸ While, in its answer, ALPA reiterates its concern that operations of Pan Am will be shifted to Boston-Maine in violation of the Railway Labor Act, we note that ALPA has not provided any findings from the National Mediation Board or other responsible court or agency finding that to be the case. As we noted in Order 2002-12-20, should the owners of Boston-Maine and Pan Am later engage in the behavior anticipated by ALPA and such behavior is determined by an appropriate agency or court to constitute a violation of the Railway Labor Act, we reserve the right to review the continuing fitness of Boston-Maine (and/or Pan Am) at that time.

¹⁹ The report shall include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements (including a balance sheet at the end of the company's first full year of operations and a 12-month incomes statement ending that same date), and a listing of current senior management and key technical personnel.

6. We will serve a copy of this order on the persons listed in Attachment A.

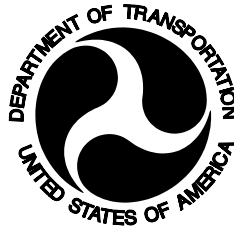
Persons entitled to petition the Department for review of this order, under 14 CFR 385.30, may file their petitions within 10 days of the service date of this order.

The action confirmed in ordering paragraph 1 of this order was effective when taken and the filing of a petition for review shall not preclude its effectiveness. The action taken in ordering paragraph 3 of this order is effective immediately and the filing of a petition for review shall not preclude its effectiveness.

By:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

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<http://dms.dot.gov>



Certificate of Public Convenience and Necessity
for
Interstate Air Transportation
(as reissued)

This Certifies That

BOSTON-MAINE AIRWAYS CORP.
d/b/a PAN AM CLIPPER CONNECTION

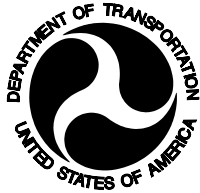
is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the
Secretary

Issued by Order 2004-8-21
On August 18, 2004
Effective on July 16, 2004
Analysis

Randall D. Bennett
Director
Office of Aviation



Terms, Conditions, and
Limitations

**BOSTON-MAINE AIRWAYS CORP.
D/B/A PAN AM CLIPPER CONNECTION**

is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.

This authority is subject to the following provisions:

(1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.

(2) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security.**

(3) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).

* This certificate is being reissued to reflect the effective date of the large aircraft authority conferred herein.

** To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.

(4) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

(5) The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.

(6) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.

(7) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

**SERVICE LIST FOR
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D/B/A PAN AM CLIPPER
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